

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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**MEMO ENDORSED**

IN RE:

LONDON SILVER FIXING ANTITRUST  
AND COMMODITIES LITIGATION

*This Document Relates to All Actions*

1:14-MD-02573 (VEC)

**MOTION OF DEFENDANTS HSBC BANK USA, N.A. AND  
THE BANK OF NOVA SCOTIA FOR LEAVE TO FILE  
AN AMENDED MOTION FOR JUDGMENT ON THE PLEADINGS**

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*Attorneys for The Bank of Nova Scotia  
Defendants*

Defendants HSBC Bank U.S.A., N.A. and the Bank of Nova Scotia (“Defendants”)<sup>1</sup> respectfully move for leave to file an amended Motion for Judgment on the Pleadings, pursuant to Federal Rule of Civil Procedure 12(c).

On February 28, 2022, Defendants moved for judgment on the pleadings seeking the dismissal of Plaintiffs’ antitrust claims, arguing that Plaintiffs lacked antitrust standing pursuant to new Second Circuit authority, *Schwab Short-Term Bond Mkt. Fund v. Lloyds Banking Grp. PLC*, 22 F.4th 103 (2d Cir. 2021) (“*Schwab II*”). (ECF No. 584.) On August 8, 2022, Defendants submitted a letter-brief arguing that Plaintiffs’ Commodity Exchange Act (“CEA”) and antitrust claims also had failed to adequately plead injury pursuant to another new Second Circuit decision, *Gamma Traders – I LLC v. Merrill Lynch Commodities, Inc.*, 41 F.4th 71 (2d Cir. 2022). (ECF No. 597.) On August 24, 2022, the Court ordered Defendants to file a consolidated 12(c) brief, and Defendants did so on September 30, 2022. (ECF Nos. 599, 600.) Plaintiffs’ opposition brief is currently due this Friday, October 28, 2022.

After Defendants filed their consolidated 12(c) brief, the Second Circuit issued a decision that is also pertinent to Defendants’ 12(c) motion, *Laydon v. Coöperatieve Rabobank U.A.*, \_\_ F.4th \_\_, 2022 WL 10208500 (2d Cir. Oct. 18, 2022), attached hereto. *Laydon* affirmed the dismissal of claims brought by an American futures trader based on the alleged manipulation of foreign-exchange benchmarks by a group of banks, reasoning, in pertinent part, that “Plaintiff’s CEA claims are based predominantly on foreign conduct and are thus impermissibly extraterritorial” and that “Plaintiff lacked antitrust standing.” *Id.* at \*1.

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<sup>1</sup> In addition to these entities, the affiliated moving entities are: HSBC Holdings Plc, HSBC North America Holdings Inc., HSBC U.S.A. Inc. (together with HSBC Bank (U.S.A.), N.A., “HSBC”); Scotia Capital (USA) Inc., Scotiabanc Inc., and Scotia Holdings (US Inc.) (together with the Bank of Nova Scotia, “Scotiabank”) (collectively, “Defendants”). Third Amended Complaint ¶¶ 56, 73 (ECF No. 258).

Defendants respectfully request leave to file an amended memorandum in support of their motion for judgment on the pleadings by November 11, 2022, not to exceed 30 pages in length, so that Defendants may address *Laydon* in that motion, and in particular, extraterritoriality as a further basis for dismissal, which is not addressed in the motion filed on September 30. Defendants further propose that Plaintiffs' opposition be due December 2, 2022, not to exceed 30 pages in length; and that Defendants' reply be due December 16, 2022, not to exceed 12 pages in length. Doing so would allow the Court to efficiently review a single set of briefs that address all pertinent authority, consistent with the Court's August 24, 2022 order. Defendants have conferred with Plaintiffs, who consent to Defendants' request to modify the schedule and reserve all rights with respect to any arguments raised in Defendants' briefing.

Dated: October 25, 2022  
New York, New York

Respectfully submitted,

/s/ Damien J. Marshall

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Application GRANTED. The motion for judgment on the pleadings is DENIED without prejudice and with leave to refile. Defendants' renewed motion is due no later than **November 10, 2022**, in a brief not to exceed thirty pages. Plaintiffs' response is due by **December 2, 2022**, and Defendants' reply is due by **December 16, 2022**. The Clerk of Court is respectfully directed to terminate the open motions at docket entries 600 and 602.

SO ORDERED.



10/26/2022

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HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE